

SENATE BILL No. 58

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-8.1-8-2.

Synopsis: Tax liens. Provides that the department of state revenue may not initiate a proceeding to foreclose on a lien arising from a judgment on a tax warrant more than ten years after the judgment creating the lien is filed. Specifies that if the department does not initiate proceedings to foreclose on such a lien within ten years after the date the judgment is filed, the lien shall be released.

Effective: July 1, 2010.

Steele

January 5, 2010, read first time and referred to Committee on Judiciary.

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Second Regular Session 116th General Assembly (2010)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

SENATE BILL No. 58

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 6-8.1-8-2, AS AMENDED BY P.L.111-2006,
2 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2010]: Sec. 2. (a) Except as provided in IC 6-8.1-5-3, the
4 department must issue a demand notice for the payment of a tax and
5 any interest or penalties accrued on the tax, if a person files a tax return
6 without including full payment of the tax or if the department, after
7 ruling on a protest, finds that a person owes the tax before the
8 department issues a tax warrant. The demand notice must state the
9 following:
10 (1) That the person has ten (10) days from the date the department
11 mails the notice to either pay the amount demanded or show
12 reasonable cause for not paying the amount demanded.
13 (2) The statutory authority of the department for the issuance of
14 a tax warrant.
15 (3) The earliest date on which a tax warrant may be filed and
16 recorded.
17 (4) The statutory authority for the department to levy against a



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person's property that is held by a financial institution.

(5) The remedies available to the taxpayer to prevent the filing and recording of the judgment.

If the department files a tax warrant in more than one (1) county, the department is not required to issue more than one (1) demand notice.

(b) If the person does not pay the amount demanded or show reasonable cause for not paying the amount demanded within the ten (10) day period, the department may issue a tax warrant for the amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs, and fees established under section 4(b) of this chapter when applicable. When the department issues a tax warrant, a collection fee of ten percent (10%) of the unpaid tax is added to the total amount due.

(c) When the department issues a tax warrant, it may not file the warrant with the circuit court clerk of any county in which the person owns property until at least twenty (20) days after the date the demand notice was mailed to the taxpayer. The department may also send the warrant to the sheriff of any county in which the person owns property and direct the sheriff to file the warrant with the circuit court clerk:

(1) at least twenty (20) days after the date the demand notice was mailed to the taxpayer; and

(2) no later than five (5) days after the date the department issues the warrant.

(d) When the circuit court clerk receives a tax warrant from the department or the sheriff, the clerk shall record the warrant by making an entry in the judgment debtor's column of the judgment record, listing the following:

(1) The name of the person owing the tax.

(2) The amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs, and fees established under section 4(b) of this chapter when applicable.

(3) The date the warrant was filed with the clerk.

(e) When the entry is made, the total amount of the tax warrant becomes a judgment against the person owing the tax. The judgment creates a lien in favor of the state that attaches to all the person's interest in any:

(1) chose in action in the county; and

(2) real or personal property in the county;

excepting only negotiable instruments not yet due.

(f) A judgment obtained under this section is valid for ten (10) years from the date the judgment is filed. ~~The department may renew the judgment for additional ten (10) year periods by filing an alias tax warrant with the circuit court clerk of the county in which the judgment~~

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~~previously existed. The department may not initiate a proceeding to foreclose on a lien described in subsection (e) more than ten (10) years after the judgment creating the lien is filed. If the department does not initiate proceedings to foreclose on the lien within ten (10) years after the judgment is filed, the lien shall be released.~~

(g) A judgment arising from a tax warrant in a county may be released by the department:

(1) after the judgment, including all accrued interest to the date of payment, has been fully satisfied; or

(2) if the department determines that the tax assessment or the issuance of the tax warrant was in error.

(h) If the department determines that the filing of a tax warrant was in error, the department shall mail a release of the judgment to the taxpayer and the circuit court clerk of each county where the warrant was filed. The department shall mail the release as soon as possible but no later than seven (7) days after:

(1) the determination by the department that the filing of the warrant was in error; and

(2) the receipt of information by the department that the judgment has been recorded under subsection (d).

(i) If the department determines that a judgment described in subsection (h) is obstructing a lawful transaction, the department shall mail a release of the judgment to the taxpayer and the circuit court clerk of each county where the judgment was filed immediately upon making the determination.

(j) A release issued under subsection (h) or (i) must state that the filing of the tax warrant was in error. Upon the request of the taxpayer, the department shall mail a copy of a release issued under subsection (h) or (i) to each major credit reporting company located in each county where the judgment was filed.

(k) The commissioner shall notify each state agency or officer supplied with a tax warrant list of the issuance of a release under subsection (h) or (i).

(l) If the sheriff collects the full amount of a tax warrant, the sheriff shall disburse the money collected in the manner provided in section 3(c) of this chapter. If a judgment has been partially or fully satisfied by a person's surety, the surety becomes subrogated to the department's rights under the judgment. If a sheriff releases a judgment:

(1) before the judgment is fully satisfied;

(2) before the sheriff has properly disbursed the amount collected;

or

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- 1 (3) after the sheriff has returned the tax warrant to the department;
- 2 the sheriff commits a Class B misdemeanor and is personally liable for
- 3 the part of the judgment not remitted to the department.

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